IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3622 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

PANKAJ ALIAS PAKO AMRUTBHAI WAGHELA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3622 of 2001

MR MUKESH D RAVAL for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/08/2001

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution, petitioner/detenu who has been detained by the Commissioner of Police, Ahmedabad City, Ahmedabad vide order dated January 20, 2001 in exercise of the

powers conferred under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short hereinafter), has challenged the order of his detention and prayed to issue a writ of habeas corpus or any other appropriate writ or order quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. The grounds of detention order dated January 20, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act and he is carrying on the alleged anti social activities pertaining to the illegal liquor business within the jurisdiction of Ahmedabad City Police Commissioner. The detaining authority, therefore, relied upon the three cases registered against the petitioner vide CR No 5350 of 1999, 5262 of 2000 and 59 of 2001 with Kagdapith police station and Nashabandi police station, South part, for the offences under the Bombay Prohibition Act.

3. It is contended by the petitioner that the last offence was registered against the petitioner on January 18, 2001 and on the same day statements of witnesses were recorded which were verified by the detaining authority on January 19, 2001 and immediately thereafter within a period of one day i.e. on January 20, 2001 order of detention was passed. Therefore, the detaining authority has not applied his mind properly before passing the impugned order of detention and, therefore, the said order of detention is vitiated as the Commissioner of Police, Ahmedabad City, Ahmedabad has not recorded the subjective satisfaction before passing the impugned order.

4. I have considered the submissions canvassed by Mr. M.D.Raval, learned Advocate for the petitioner/detenue and Mr. K.T.Dave, learned AGP for the respondents. I have also perused the averments made in the petition as well as the impugned order of detention and the statements of the witnesses recorded by the DCB(Crime) Sponsoring Authority which were verified by the detaining authority and were annexed to the petition. There is no manner of doubt that against the petitioner three cases for commission of the offences under the Prohibition Act have been registered. The last case is registered on January 18, 2001 and thereafter immediately on the same day sponsoring authority has recorded the statement of the witnesses which were supplied to the detaining authority who has verified them on January 19, 2001 and thereafter passed the order of detention on January 20, 2001. Therefore, within a span of three days

after the last offence, the detaining authority has passed the order of detention. Therefore, it may be said that the detaining authority has passed the order in a mechanical manner which suffers from vices of the non-application of mind.

5. Similar question arose before this Court in the case of Ranubhai B. Bharwad Vs. State of Gujarat and Others- 2000(3) GLR page 2696. In the said case, the proposal of detention was received on August 27, 1999, verification of statements of three witnesses were made by detaining authority on August 29, 1999 and detention order was passed on August 30, 1999. Therefore, it was held that the exercise by the detaining authority was a mechanical one, devoid of application of mind and, therefore, detention order was quashed. In the said judgement, the reported decision of this Court in the case of Kalidas C Kahar Vs. State- 1993(2) GLR 1659 was also relied upon.

6. Applying the said principles to the facts of the present case at the cost of repetition be it stated that in the instant case also statements of witnesses were recorded by the sponsoring authority on January 18, 2001 which were supplied to the detaining authority who has verified them on January 19, 2001 and the order of detention came to be passed on January 20, 2001. Therefore, it can be said that the detaining authority has passed the order in a mechanical manner which suffers from the vices of non-application of mind and hence deserves to be quashed and set aside.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated January 20, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*